

The Challenge of Anti-Corruption During the Covid-19 Pandemic: Considering the Utilization of Interception and the Protection of Human Rights

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ABSTRACT

This research aims to find an ethical relationship between corruption, corruption eradication and human rights in the context of the Covid-19 pandemic in Indonesia. This research uses a qualitative approach. Data was collected through literature study and interviews. The findings of the research indicate that, corruption affects the fulfillment of basic needs of the community, in the context of the pandemic it has a deeper impact on the quality of meeting the basic needs of the community. Simultaneously, anti-corruption with the spirit of retributive justice that uses interception is considered quite effective. debate use of interception in the anti-corruption as a human rights violations, can be ravel by looking back at the principles of proportionality and legal protection. while to prevent of abuse of interception authority, appropriate mechanisms are needed. It can be seen that the spirit of retributive justice in anti-corruption reciprocates the impact of corruption on human rights. On other hand, human rights approach to prevent abuse of interception in anti-corruption.

Keywords: *Indonesia, corruption, human rights, interception.*

1. INTRODUCTION

The Financial and Development Supervisory Agency (BPKP) revealed that in 2020 the Government of Indonesia allocated a budget of more than Rp. 800 trillion for handling the corona virus pandemic (Covid-19). Budget refocusing is sourced from the National/Regional Revenue and Expenditure Budget (APBN/D) and village funds. For 2021, apart from handling the Covid-19 pandemic, it is also allocated for national economic recovery with a total budget of Rp. 744.75 trillion.

The largest budget allocation for health is Rp. 214.95 trillion and Rp. 193.9 trillion for the social protection budget. TV Krastev reminded that the provision of large budget allocations, especially for social assistance or social security in emergencies and crises such as the Covid-19 pandemic has a high risk of corrupt behavior.[1] Lack of transparency and accountability is a public sector fundamental problem.

These concerns became real with the Juliari Batubara case. Juliari P Batubara as the Minister of Social Affairs received Rp. 32.2 billion sourced

from the procurement of social assistance package worth Rp. 5.9 trillion with a total of 272 contracts executed in two period.[2] Uncovering of Juliari's corruption case is the development of a hand arrest operation (OTT) by the Anti-Corruption Commission (KPK) against the commitment maker (PPK) and the company that won the tender. In the trial on March 22, 2021, KPK presented recording the results of interception between Juliari's aide and PPK regarding the of a commitment fee of Rp. 10.000/package of social assistance.[3]

This paper examines corruption, especially those committed during the Covid-19 pandemic or crisis conditions as human rights violations. Vis a vis, process of initial investigation and investigation use interception in anti-corruption, it must be carried out within a legal framework and human rights. This paper uses a qualitative method with a descriptive narrative. Data for this study were collected using interviews KPK Legal Bureau, JT Simanjuntak. While secondary data obtained from books, journals, reports, and legislation.

2. METHODS

The term corruption is generally adopted from one word in Latin, namely *corruptio* or *corruptus*. This term is known in English as corruption, while in French it becomes corrupt and, in the Netherlands, it becomes *korruptie*. Indonesia seems to copy from the Dutch language so that it is now known as corruption.[4] Andi Hamzah said that corruption is rottenness, ugliness, depravity, dishonesty, bribery, immorality, deviation from chastity, insulting and slanderous words or words. [5] Corruption in governance which is very radical and has become a reference in a democratic rule of law is the opinion of the British historian Lord Acton in 1887 namely "power tend to corrupt, absolute power corrupts absolute".[6]

In the modern context, corruption is interpreted as a behavior that abuses public office or authority in the form of power for personal gain. A. Shah and M. Schacter in "Combating Corruption: Look Before You Leap" categorizes corruption into 3 (three) types, namely: first, Grand corruption, Theft or misuse of vast for amounts of public resources by state officials usually members of, or associated with, the political or administrative elite constitutes grand corruption; second, State capture/influence peddling. Collusion by private actors with public officials or politicians for their mutual, private benefit is referred to as state capture. Third, Petty administrative or bureaucratic corruption. Many corrupt acts are isolated transactions by individual public officials who abuse their office. Such acts are often referred to as petty corruption even though, in the aggregate, a substantial amount of public resources may be involved.

The World Bank considers Indonesia in international relations to have a bad reputation with corruption problems and is in the lowest position with the most corrupt countries in the world. Transparency International Indonesia revealed that in 2020 Indonesia's Corruption Perception Index (GPA) was at a score of 37 or ranked 102 out of 108 countries involved. Cumulatively, this decline reached 3 points compared to 2019. Even Indonesia is in fifth place from ASEAN countries, below Singapore with GPA 85, Brunei Darussalam GPA 60, Malaysia GPA 51 and Timor Leste GPA 40. The score based on indicator 0 is very corrupt to 100 which means very clean. [7]

The relationship between corruption and human rights has a multi-dimensional perspective.[8] Corruption affects human rights both directly and indirectly. Directly, Corruption has impact on the validity of human rights. First, corruption deprives societies of important resources that could be used for basic needs, such as public health, education, infrastructure, or security. Second, corruption has direct damaging consequences in general on the functioning of state institutions, and in particular on the administration of justice.

If we now turn to indirectly, corruption reduces the quality of basic needs or even eliminates basic needs. This has an impact on people who are entitled to basic needs, their rights are violated, they begin to doubt the government in carrying out state responsibilities.[9] In the context of the COVID-19 pandemic, corruption emphasizes these impacts by reducing the quality or even eliminating the basic needs of the community or vulnerable groups,[10] and disrupting the role of the state as the holder of obligations. For this reason, the law enforcement system against corruption has an important role, especially when corruption is carried out during the COVID-19 pandemic. There is a need for guarantees from an independent and accountable judicial system to carry out the big task of protecting human rights and anti-corruption. If there are no guarantees, the worst case of corruption is that it has plagued the government, the legal system, law enforcement and legal reform. It is inconceivable that this would weaken the accountability structures responsible for protecting human rights and contribute to a culture of impunity, as illegal acts go unpunished and laws are not consistently enforced.[11]

While in the opposite context, tensions between human rights and anti-corruption arise when the process of detecting, investigating and prosecuting corruption infringes on the right to a fair trial, the presumption of innocence, the right to property and the right to privacy. Human rights advocates sometimes claim that certain anti-corruption practices violate human rights principles.[12] These "tensions" reflect the constant unease that characterises relations between law enforcement and human rights. In fact, a quite narrow range of concerns arise that are specific to corruption; most involve procedures of investigation and prosecution. [13]

3. RESULT AND DISCUSSION

The KPK as an anti-corruption institution was formed through Law No. 30 of 2002 (KPK Law) with the aim of eradicating corruption that damages the economy, budget and national development. In Article 6 the KPK has the authority to coordinate and supervise the Police and the Prosecutor's Office; initial investigation, investigation, and prosecution of corruption cases; carry out prevention and monitoring of government administration.[14] In constitutional law, the establishment of the KPK has strong legitimacy, because it is attributive, including the authority to conduct interception in initial investigation and investigation stage.[15] SF. Marbun stated that authority is an attribution which is a product of legislation between the parliament and the government as people's representatives [19]. Through the attribution authority, The KPK can consistently anti-corruption and use all of its authority.[16]

From 2004-2019, the KPK has handled corruption cases with details of 1,269 initial investigations; 1,032 have been investigated; 851 cases were successfully prosecuted in court; 709 cases have been inkracht, and 730 cases have been executed in prison. Of the overall corruption cases handled by the KPK, the modus operandi of most often committed by state officials is related to bribery as many as 683 cases, the procurement of goods and services as many as 206 cases, and 48 cases of misuse of funds.[17]

Table. 1 Corruption Case base on Modus Operandi in KPK from 2004-2019

No.	Case type	Amount
1.	Procurement of goods/services	206
2.	Permissions	23
3.	Bribery	683
4.	Extortion	26
5.	Budget Abuse	48
6.	Money Laundering	36
7.	Obstructing Anti-Corruption Process	10

Source: Annual Report KPK 2019

With the issuance of Law Number 19 of 2019 which is a revision of KPK Law, there are four fundamental changes in the interception by the KPK. These changes include, the requirement for an interception permit application to the Supervisory Board; maximum interception for six months; the result of the interception is only related to the case; and reporting the results of the interception to the Supervisory Board.[18] Although there are some changes in the interception arrangement in KPK Law, according to the author, there are still three problems in the KPK's interception which are related to human rights issues.

I. The Principle of Proportionality

Interception has important role in anti-corruption, but some countries are very selective and restrict the use of interception only to prevent and detect very serious crimes. The application of the principle of proportionality is based on the consideration of the benefits obtained and the intervention of the right to privacy. Interception is necessary when other methods of criminal investigation fail, no other legal mechanism is found and to obtain new evidence.[19]

International human rights law guarantees the right to privacy and communication from interference by state officials or other parties. At the Universal Declaration of Human Rights 1948, in Article 12 it has been stated that, "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks".[20] In the decision of the Constitutional Court Number 5/PUU-VIII/2010 that interception is a violation of human rights, it is possible to restrict it because it is not a category of non-derogable rights such as the right to life, the right to be free from torture and others. Such restrictions must be in accordance with the Siracusa principle.

The European Court of Human Rights stipulates three conditions for an interception, it must be stipulated in legislation, be open and accessible to the public. The second requirement relates to the general purpose of interception regarding state security, public order, economic interests, protecting health and morals, and protecting freedom. The third provision is to fulfill the principle of "democratic society" as stated in

the Siracusa Principle so that the restrictions remain proportional and do not interfere with civil liberties.

Based on an interview with JT Simanjuntak, KPK's Legal Bureau, interception was carried out in an initial investigation to seek information, obtain evidence of corruption after a public complaint; or collecting evidence of improper financial transactions. Interception has two meanings, namely as the beginning of systematic disclosure of criminal acts of corruption and the investigation stage to prepare evidence in court.[21] This information confirms the statement of Alexander Mawarta, a member of the KPK that three hundred Indonesian officials were intercepted as part of the initial investigation, and 132 interception permits had been issued by the Supervisory Board.[22]

The principle of proportionality and the principle of prudence should be a measure of interception in the investigation by the KPK. This context is important in Indonesian law because it relates to the mechanism for testing actions that are intervening in law enforcement efforts against human rights. Regarding interception, which is part of the forced effort, Fatahillah Akbar emphasized that in its arrangement it is mandatory in the law and can be tested in court.[23] Against the application of the Constitutional Court's coercive measures in the Constitutional Court's decision no. 21/PUU-XII/2014, states that every coercive measure must be regulated in law and its supervision must also be strengthened by pre-trial institutions.

II. Due Process of Law Principle

Interception is part of a strategy or mechanism to find evidence in corruption, but it is important that the implementation is in accordance with the due process of law.[24] In America the Due Process Clause Amendment (1868) emphasizes that nor shall any State deprive any person of life, liberty or property, without due process of law. The power to decide as to the reasonability of the same is vested in the courts. Due process of law does not only protect basic procedural rights but also protects basic substantive rights.[25]

As part of the criminal justice system and guaranteeing the implementation of the due process of law, interception by the KPK requires permission and supervision by the court after

preliminary evidence.[26] The decision of the Constitutional Court Number 5/PUU-VII/2010 mandates that in the preparation of interception regulations it is necessary to stipulate the need for permits and supervision of interception by law enforcement officers. In line with that, the Cybercrime Convention prohibits illegal interception, for the purpose of law enforcement interception may only be carried out by state institutions in accordance with national and international regulations.[27]

Various countries regulate interception for legal purposes after obtaining permission from the courts. America with Title III/ECPA authorizes both federal and state law enforcement interception under court order, without the prior consent or knowledge of any of the participants. Interception of foreign powers, suspected of espionage and terrorism, the American government still asks for permission and supervision from the courts. Interception in the Netherlands is likened to law enforcement actions such as detention, confiscation, search, thus requiring permission from the Court.

The permit has meaning as part of the mechanism for monitoring the criminal justice system and protecting the public from abuse of power.[28] Similarly, majority of countries regulate interception under the courts, only a few countries such as India and Singapore regulate interception permits by the government. The Supreme Court considers that the interception permit and supervision should be under the court, on the basis of implementing the constitutional law governing the trias politica (executive, legislative and judicial) and supervising the Police and Prosecutors in the concept of a criminal justice system.[29]

III. Remedy and Lawsuit Against Interception

International Covenant on Civil and Political Rights (ICCPR) guarantees that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy with competent judicial, administrative or legislative authorities, notwithstanding that the violation has been committed by persons acting in an official capacity. One of the elements of the rule of law is the protection of human rights through the courts.[30] Remedy for victims must be proportional to the limitations imposed and through an accountable stage. This process will prevent authoritarianism,

encourage prudence in handling cases, minimize errors in interception and justice in court.[31]

Several European countries have determined that interception is the object of a lawsuit in the Court. The Netherlands uses the exclusionary rules mechanism in collecting evidence through the provisions of Article 359a paragraph (1) *Wetboek van Strafvoordering*, the Court only accepts evidence obtained legally and will provide compensation or a reduction in imprisonment for the. The UK provides a lawsuit mechanism by the victim of an illegal interception act to the Investigatory Powers Tribunal (IPT) a tribunal set up under the Regulation of Investigatory Powers Act 2000 (RIPA) to deal with complaints against the exercise of power under Section 65(2) (b) and (4), including interception warrants. The Tribunal will only issue a statement that it has made no determination in the applicant's favour (which could mean that there was no intercept in the first place or that there was interception but it was lawful) or a statement that they have made a determination in his favour (meaning that there was unlawful interception).[32]

In the criminal justice system in Indonesia, interception is not the object of a pre-trial lawsuit as regulated in Article 77 paragraph (1) of the Criminal Procedure Code and in the Constitutional Court's decision Number 21/PUU-XII/2014 relating to claims for additional pre-trial objects.[33] Article 63 paragraph (1) and (3) of the KPK Law regulates the legal rights of a person whose interests have been harmed by the KPK in initial investigations, investigations and prosecutions to the district court. Victims have the right to claim compensation to the court in a civil law mechanism. Article 98 of the Criminal Procedure Code stipulates that the judge at the request of the victim may decide to merge the lawsuit for compensation to the criminal case[34]. This regulation becomes the basis for anyone who is harmed by the actions of the KPK in the initial investigation, investigation or prosecution stage, including interception which is considered detrimental to personal dignity to sue in court. Lawsuits against legal procedures and mechanisms are not the basis for criminal acts to avoid legal proceedings.

4. CONCLUSION

This study has shown that the large allocation of funds for handling and recovering the Covid-19

pandemic has a high risk of corruption. During the Covid-19 pandemic corruption will exacerbate reduce quality or even eliminate the basic needs of the community or vulnerable groups. In the aspect of law enforcement by the KPK, the use of interception as a legal mechanism for gathering information and evidence has proven to be effective in anti-corruption.

Accord corruption as a human rights violations, at that point anti-corruption is a protection of human rights. So, mechanism interception should upheld human rights approach. The importance of applying the principle of proportionality is carried out to ensure the necessity and guarantee the implementation of a democratic rule of law by respecting the right to personal freedom of its citizens. To avoid abuse of authority in an effort to force wiretapping, it is necessary to formulate a test and put it in the investigation stage. The existence of a recovery scheme and a right to sue against interception complements an effective interception scheme in anti- corruption.

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